STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**:**	
On Its Own Motion	**:**	
	:	**98-0194**
Implementation of Section 16-127	**:**	
of the Public Utilities Act	**:**	

ORDER

By the Commission:

I. INTRODUCTION

On July 22, 1998, the Illinois Commerce Commission ("Commission") entered an order authorizing the submission to the Secretary of State of the first notice of the proposed 83 Ill. Adm. Code Part 421, "Environmental Disclosure." The proposed rules will implement Section 16-127 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., which requires electric utilities and alternative retail electric suppliers ("ARES") to disclose in customers' bills the source of electricity generated and the amount of certain pollutants produced as a result of generation.

The proposed rules were published in the *Illinois Register* on August 7, 1998, initiating the first notice period pursuant to Section 5-40(b) of the Illinois Administrative Procedure Act, 5 ILCS 100/1-1 et seq. The Environmental and Consumer Intervenors ("ECI") and Commonwealth Edison Company ("ComEd") filed comments during the first notice period. Both parties were active participants during the hearing phase of this proceeding. Their respective comments are summarized and discussed below. Although none of the comments merit substantive changes, clarifications have been made to the rules in response to the comments. Additional grammatical changes have also been made to the proposed rules.

II. ComED'S COMMENTS

Just as it did prior to the first notice period, ComEd continues to oppose disclosure of low-level nuclear waste. ComEd concedes that the Commission has the discretion to require disclosure of low-level nuclear waste, but urges the Commission to limit disclosure of nuclear waste to high-level nuclear waste. All of the arguments advanced by ComEd against disclosing low-level nuclear waste were rejected by the Commission when the Commission approved the proposed Part 421 for the first notice period. Section 16-127(b) calls for disclosure of "waste attributable to the known sources of electricity supplied." ComEd simply refuses to admit is that low-level nuclear waste is "attributable" to nuclear energy, as is high-level nuclear waste. If ComEd believes that customers may benefit from

additional explanation regarding low-level nuclear waste, it is free to include such information pursuant to Section 421.40(a)(5). ComEd also asserts that it does not currently collect quarterly statistics for low-level nuclear waste, but only does so annually; and that to begin collecting such data quarterly will force ComEd to incur a cost to meet this regulatory requirement. ComEd does not quantify this alleged cost, nor does it identify any language stating that electric utilities and ARES shall not incur any costs in complying with the statutory requirements of Section 16-127. In fact, the Commission observes, the opposite is frequently true—statutory and regulatory requirements often impose costs on regulated entities. As the Commission recognized in the first notice order, any incremental burden associated with reporting this data quarterly is insignificant.

Secondly, ComEd takes issue with language in the order that requires a utility or ARES to be prepared to make a compelling showing that it is absolutely not practical to obtain and provide the information to be disclosed before including that energy in the "unknown resources" category. ComEd believes that Section 16-127's "to the maximum extent practicable" applies to the method of disclosure, not the knowledge of the company. The Commission rejects this argument and continues to agree with ECI that "to the maximum extent practicable" describes the obligation of utilities and ARES to be prepared to make a compelling showing that it is absolutely not practical to obtain and provide the information in question. Such a compelling showing may be made by demonstrating that all reasonable steps to obtain and provide the information have been taken. Without such a standard, Section 16-127 would be meaningless since utilities and ARES could report a large portion of their electricity as "unknown" when in fact source and pollution data is reasonably within their reach, thus depriving Illinois electricity consumers of information that the General Assembly has mandated they receive. ComEd also contends that this standard will deter small ARES from operating in Illinois, but fails to explain exactly how. In any event, Section 16-127 contains no exemption for small ARES; therefore the Commission concludes that the General Assembly intended for all suppliers of electricity, regardless of size, to provide the information in question.

The next point that ComEd makes concerns Sections 421.30(a)(1)(A) and 421.40(a)(1)(A). These sections require the percentage of all fuel sources in the "source table" to be rounded to the nearest whole number. The order states that rounding to the nearest whole number will facilitate customer comprehension. By rounding, however, ComEd is concerned that any fuel source which is less than one-half of one percent will be disclosed as zero, just as if there were none at all. ComEd uses itself and solar energy to demonstrate the consequences of this proposed rule. ComEd supplied a native load of over 88 billion kilowatt-hours in 1998.[1] Achieving even half a percent solar generation would require over 440 million kilowatt-hours—over a third of the solar generation by all electric utilities in the United States.[2] ComEd is concerned that a company its size could install a large quantity of solar, wind, hydro, and biomass energy resources, and still be

[1] ComEd refers in its comments to the native load it supplied in "1998," but offers no explanation as to how such a figure for 1998 can be derived before 1998 has ended.

[2] ComEd cites the U.S. Energy Information Administration as the source of the national data upon which ComEd bases this assertion.

forced to disclose each of them as "0%." ComEd suggests that the Commission allow percentages less than one percent to be disclosed as "<1%" to distinguish them from "0%." While the Commission acknowledges and appreciates ComEd's situation, the Commission does not find it appropriate to change the rule. The Commission recognizes that ComEd's situation in part stems from its sheer size; ComEd is by far the largest electric utility in Illinois and is among the largest in the nation. Smaller generators of electricity who may achieve one percent of a renewable energy source much more easily than ComEd could take advantage of such a modification by utilizing the smallest quantity of a renewable energy source possible for the sole purpose of appearing more "green" than they really are; thus misleading Illinois consumers. The Commission also believes that one of the purposes of Section 16-127 is to indirectly encourage the development of renewable energy sources in Illinois, and the economic growth that accompanies such development. Electric utilities and ARES that wish to earn the business of environmentally conscious consumers may invest resources in obtaining and developing renewable energy sources in Illinois in order to make their electricity more attractive to such consumers. What is good for ComEd is not necessarily good for the people of Illinois.

ComEd also notes its support for the applicability section of the proposed rules, Section 421.10. ComEd believes that the distinction between delivery services and the ARES or electric utility that supplies the customer with power is appropriate. Section 421.10 states that utilities providing only delivery services to particular customers are not responsible for providing the environmental disclosure information to those particular customers.

ComEd's final comment regards the units of measurement required by the proposed rules. Sections 421.30(a)(3) and 421.40(a)(3) of the proposed rules require carbon dioxide, nitrogen oxide, sulfur dioxide, and high-level nuclear waste to be reported in pounds per 1,000 kilowatt-hours and low-level nuclear waste to be reported in cubic feet per 1,000 kilowatt-hours. In the order initiating the first notice period, the Commission approved the use of pounds and "1,000 kilowatt-hours" on the basis that these units are familiar to consumers and will produce meaningful numbers. Cubic feet for low-level nuclear waste was approved because it is the unit currently used by the Illinois Department of Nuclear Safety. ComEd supports the use of these units, but noted that in the alternative, would also support the use of metric units instead of pounds. The Commission rejects this alternative now for the same reason that it rejected the use of metric units in the first notice order—in all likelihood, consumers in Illinois are more familiar with the English pound than the metric gram or milligram.

III. ECI'S COMMENTS

ECI represents the Environmental Law and Policy Center of the Midwest, American Lung Association of Metropolitan Chicago, Illinois Environmental Council, People of the State of Illinois, People of Cook County, and Citizens Utility Board. ECI's first comment addresses Section 421.10 of the proposed rules and what ECI perceives as ambiguity in the language exempting electric utilities that provide only delivery services from the

requirements of proposed Part 421. ECI believes that the rule should be clarified to ensure that at least one entity does indeed provide the environmental disclosure to customers. The Commission appreciates ECI's concern for clarity but finds that the proposed Section 421.10 is sufficiently clear and adequately conveys the Commission's intent that an electric utility that provides only delivery services for power that it has not generated or sold itself be exempt from Part 421's disclosure requirements. The Commission does, however, adopt certain grammatical changes to Section 421.10 suggested by ECI.

ECI also comments on Section 16-127's "to the maximum extent practicable" language and the incorporation of ECI's interpretation of this language into the order. The Commission agreed with and adopted ECI's interpretation in the first notice order. The relevant portion of page 10 of the order states, "this standard is beyond a good faith showing and requires a utility or ARES to be prepared to make a compelling showing that it is absolutely not practical to obtain and provide the information in question." ECI approves of this language in the order but believes that it should also be included in the rules because many electric utilities and ARES are likely to read the rules, but not the order. For the same reasons that the Commission was careful to explain the strength of this standard in the order, ECI avers that this text should be incorporated into the rules as well. The Commission concurs with ECI on this point and follows ECI's suggestion of adding this text to the definition of "unknown resources purchased from other companies." The Commission also finds it reasonable to insert additional language explaining that this standard may be met by demonstrating that all reasonable steps to obtain and provide the information in question have been taken.

The next two comments by ECI concern high-level and low-level nuclear waste, respectively, and because they are similar in nature will be addressed together. Both high-level and low-level nuclear waste are reported on the basis on "1,000 kilowatt-hours," which, as mentioned earlier, was adopted by the Commission because it produces meaningful numbers and uses terms familiar to electricity consumers. ECI, however, asserts that using "1,000 kilowatt-hours" will not, as a general matter, produce big enough numbers to be meaningful to customers in the context of nuclear waste. In an effort to make the numbers seem bigger, or more meaningful as ECI claims, ECI suggests reporting high-level and low-level nuclear waste on the basis of "1,000,000 kilowatt-hours." The Commission rejects this suggestion. Reporting some pollutants using a denominator of 1,000 and others using a denominator of 1,000,000 may confuse consumers. Nor has any evidence been presented to show that "1,000,000 kilowatt-hours" is any more meaningful to consumers. The Commission takes notice of the fact that relatively few consumers of electricity in Illinois use anywhere near 1,000,000 kilowatt-hours in a one month. The typical electric customer in Illinois is much more apt to find "1,000 kilowatt-hours" more meaningful than "1,000,000 kilowatt-hours." The Commission also notes that ECI could have made this suggestion during the hearing stage of this proceeding, but neglected to do so.

ECI's fifth comment is aimed at Sections 421.30(a)(3)(D) and 421.40(a)(3)(D) and their requirement that high-level nuclear waste that is less than .0001 be depicted as

"<.0001." ECI is concerned that depicting high-level nuclear waste as "<.0001" will suggest to consumers that the amount of waste is de minimis. To alleviate its concern, ECI asks the Commission to adopt the simple solution of not allowing rounding to zero. ECI wants the Commission to apply the same rule to low-level nuclear waste as well. The Commission rejects this suggestion because it will not produce numbers that are any more meaningful to consumers than "<.0001." The Commission believes that many customers may consider any number less than .0001 de minimis, whether it is depicted as "<.0001" or a smaller number not rounded to zero.

ECI's final comment regards Section 421.40(a)(4) of proposed Part 421. The order requires electric utilities and ARES to provide the environmental disclosure data on a separate insert in customers' bills. ECI, however, asserts that Section 421.40(a)(4) does not clearly reflect the Commission's intent to require separate inserts. The Commission agrees with ECI and adopts ECI's proposed clarifying language.

With the end of the statutorily-mandated first notice period, the Commission can now submit the second notice of the proposed rules to the Joint Committee on Administrative Rules.

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

IV. FINDINGS AND ORDERING PARAGRAPHS

(1) the Commission has jurisdiction over the parties hereto and the subject matter herein;

(2) the recitals of fact set forth in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact;

(3) the proposed rules in 83 Ill. Adm. Code 421, as reflected in the attached Appendix, should be submitted to the Joint Committee on Administrative Rules to begin the second notice period.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the proposed rules in 83 Ill. Adm. Code 421, as reflected in the attached Appendix, be submitted to the Joint Committee on Administrative Rules, pursuant to Section 5-40(c) of the Illinois Administrative Procedure Act.

IT IS FURTHER ORDERED that this order is not final and is not subject to the Administrative Review Law.

By order of the Commission this 7th day of October, 1998.

(SIGNED) RICHARD L. MATHIAS

Chairman

(S E A L)